IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1344 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JADWANI LABHUBEN MOHANBHAI & 2 - Opponent(s)

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Appearance :
MR AJ DESSAI ADDL.PUBLIC PROSECUTOR for Appellant(s) : 1,
MR SHIRISH B TOLIA for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure

against the judgment and order rendered by learned Extra Assistant Judge, Bhavnagar in Sessions Case No.40 of 2001, whereby the present respondents, being accused of the Sessions Case, came to be acquitted by the trial court, for the offences punishable under Sections 306, 498-A and 114 of the Indian Penal Code.

2. Leave to Appeal is granted. Appeal is admitted. Mr. Shirish Tolia, learned advocate appearing on behalf of the respondents – original accused requested the court to hear the matter finally as the Record and Proceedings from the trial court is available with us and that they would assist the Court with extra copies of the evidence and the documents produced before the trial court. The request is granted and Appeal is heard finally.

3. As per the prosecution case, the complaint came to be lodged against the respondents – original accused by Shantibhai Dahyabhai Mistri, father of the deceased Rupal, at Bhavnagar City A-Division Police Station being C.R. No.408 of 2000 on 8/8/2000 alleging inter-alia that the original accused No.1 is

the Mother-in-law of the deceased Rupal, original accused No.2 is the husband and original accused No.3 is the Brother-in-law of the deceased. As per the prosecution case and as stated in the complaint, the daughter of the complainant Rupal, after her marriage was residing with the accused persons in joint family and having not satisfied with the household articles and other items given after the marriage, all the accused persons were ill-treating physically as well as mentally the deceased Rupal and thereby they have committed offence under sec.498-A of the Indian Penal Code. It was also the further case of the prosecution that the deceased was physically and mentally harassed and thereby the deceased was forced to commit suicide and the deceased Rupal committed suicide on 25/7/2000 by taking poisonous substance / liquor and therefore, all the accused persons were charged for the offence punishable under secs.306, 498-A read with sec.114 of Indian Penal Code. It appears that before that in the hospital when the dead-body of the deceased was handed over to the original complainant, he was

asked whether he wants to file any complaint and/or he is alleging anything against any accused and statement of the complainant was recorded and in the said statement he has specifically stated that he has no complaint and therefore, no complaint was filed. After the aforesaid First Information Report / complaint, investigation was carried out by the investigating officer and the investigating officer recorded statement of various persons inclusive of the Doctor who performed the postmortem. Thereafter, charge-sheet came to be filed against the accused person, after completion of the investigation. The learned Chief Judicial Magistrate, Bhavnagar registered the said charge-sheet as Criminal Case No.7509 of 2000 and thereafter, the case was committed to the Court of Sessions, which was registered as Sessions Case No.440 of 2001 and the learned Extra Assistant Judge, Bhavnagar framed the charges against all the accused persons vide Ex.2 on 2/9/2004 and each of the respondents pleaded not guilty and therefore, the prosecution examined as many as 8 (eight) witnesses and

produced on record voluminous documentary evidence. After the evidence of the prosecution was over, incriminating circumstances appearing against each of the respondents were brought to the notice of them and their defence was of total denial in the statement recorded by the Extra Assistant Judge, Bhavnagar under sec.313 of the Code of Criminal Procedure. The learned trial court, thereafter heard the prosecution as well as defence in detail and came to the conclusion of acquitting the respondents of the charges levelled against them and hence this appeal.

4. Mr.A.J. Desai, learned Additional Public Prosecutor appearing on behalf of the State and Mr.S.B. Tolia, learned advocate appearing on behalf of the respondents were heard in detail in respect of this appeal.

5. We have gone through the Record and Proceedings of the trial court minutely and threadbare. We have considered the vital features of the matter and reasonable probability arising out of the circumstances of the case. We have taken into

account the appreciation of the evidence undertaken by the trial court and reasons assigned for the acquittal. We have taken into consideration the contentions raised by learned advocates for the respective parties in this matter. We have scanned carefully the evidence recorded during trial after re-appreciating it to assess the reasons assigned by the trial judge for the acquittal.

6. PW-1 Dr.Anand Dhirajlal Raninga came to be examined at Ex.8. PW-W - original complainant named Shantibhai Dahyabhai came to be examined at Ex.13. PW-4 Jitesh Shantibhai Mistri came to be examined at Ex.17. PW-5 Mahesh Babulbhai Vithlani came to be examined at Ex.18, PW-6 Valjibhai Natvarbhai Lakhtariya came to be examined at Ex.19, PW-7 Nasirkhan Anwarkhan came to be examined at Ex.20 and PW-8 Rasilaben Babubhai came to be examined at Ex.21. Postmortem Report has been produced at Ex.9, original complaint has been produced at Ex.15, FSL Report came to be produced at Ex.30.

7. PW-1 Dr.Anand Dhirajlal Raninga in his deposition

has stated that he has performed postmortem of the deceased Rupal and prima facie cause of death was cardiac arrest and might be after taking poisonous liquor. In cross-examination he has specifically stated that in Viscera Report, no poisonous substance has been found and after considering the same, he has given his final opinion in respect to the cause of death and according to the same, the death of the deceased Rupal was natural.

8. Thereafter, the prosecution has examined PW-2 Shantibhai Dahyabhai – father of the deceased, who has stated in his deposition that earlier whenever his daughter was coming to her parents house, she was making complaint with regard to ill-treatment and before four years she had made complaints. He has also stated in his Examination-in-chief that as the threats were given at the time of funeral of deceased Rupal, they left and thereafter they gave complaint to the Distrit Superintendent of Police which is produced at Ex.14. In the Cross-examination he has admitted that the treatment of the deceased was by Dr.Varteji. He has also admitted in the Cross-

examination that at the time of death of the deceased and in the hospital, he has told the Doctor that his daughter has taken medicine. He has also admitted in the Cross-examination that at the time when the dead-body was handed over to the in-laws, the parents were asked whether they want to file any complaint or not. It is also admitted by him that the police has recorded his statement and he has categorically admitted in the Cross-examination that he has given statement that there was no ill-treatment to his daughter and that he does not want to file any complaint. He has also admitted in the Cross-examination that the complaint came to be filed by him at the instance of one Mr.Manojbhai, who happens to be his brother, after a period of 14 days.

9. PW-3 Rekhaben Shantibhai Mistri - mother of the deceased came to be examined at Ex.16 who has also clearly admitted in the Cross-examination that in the statements recorded on 12/7/2000, they have stated that on inquiry it was found that there was no ill-treatment to her daughter and on becoming

aggrieved, she might have taken steps and she might have taken some poisonous medicine and that they have no grievance or doubt against anybody.

10. Similar is the evidence of the brother of the deceased PW-4 Jitesh Shantibhai Mistrim, who came to be examined at Ex.17.

11. Postmortem Report came to be produced at Ex.9 and FSL Report came to be produced at Ex.30. In the FSL Report it is specifically stated that no poisonous substance is found in the Viscera Report. In the Postmortem Report final cause of death is mentioned and considering the FSL as well as Viscera Report, the Doctor has given final opinion in respect of cause of death and it is specifically mentioned that the cause of death is due to cardiac arrest and it is a natural death.

12. This is all the evidence of the prosecution.

13. The learned trial judge considered the fact that cause of death of the deceased Rupal was due to cardiac arrest and the death was a natural death. The trial court also considered the evidence of Dr.Anand Dhirajlal Raninga, Shantibhai Dahyabhai

(father of the deceased), Rekhaben Shantibhai Mistri (mother of the deceased) and Jitesh Shantibhai Mistri (brother of the deceased) and considering the oral as well as documentary evidence and considering the facts that the complaint came to be filed after a period of 14 days and that in the cross-examination all the witnesses i.e. father, mother and brother of the deceased have categorically admitted that in their statement recorded by the police on 12/7/2000, they have stated that there was no ill-treatment and/or harassment to the deceased and they do not want to file complaint and that they have no doubt against anybody. Considering the above, the learned trial court acquitted the accused persons from the offences under sections 306, 498-A and 114 of the Indian Penal Code by holding that it is not proved that the accused persons have committed the offence as alleged. The learned trial court came to the conclusion that neither offences under sections 306. 498-A nor offence under sec.114 of Indian Penal Code could be established by the prosecution against

any of the respondents and thereby acquitted all the accused.

14. We have gone through the evidence recorded during trial produced by the prosecution. We have also considered Postmortem Report as well as FSL Report and from the same it is found that the death of the deceased was natural and was due to cardiac arrest. We have considered the fact that the complaint came to be filed after a period of 14 days and that too at the instance of the brother of the original complainant. It is also found from the evidence of the father, mother and brother of the deceased who came to be examined at Ex.Nos.13, 16 and 17, that at the time of funeral of the deceased Rupal, the police specifically asked them whether they want to file any complaint and at that time, they have told the police that they do not want to file complaint and they have no complaint or doubt against any body. It has also come out from the Cross-examination of the aforesaid witnesses that they have also stated in the statement before the police that there was no ill-treatment or harassment

to the deceased. Considering the above, when the trial court has acquitted the respondents for the offences punishable under sections 306, 498-A and 114 of Indian Penal Code, it cannot be said that any illegality is committed by the trial court in acquitting the respondents herein – original accused and/or the finding of the trial court is contrary to evidence on record. The conclusion arrived at by the trial court could not be labelled as perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable.

15. The scope of appeal against the acquittal is well defined by law. The orders against the acquittal cannot lightly be interfered unless it is found by the appellate court that the reasoning assigned by the trial court and conclusions arrived were so perverse that in any manner it cannot stand to reason. As discussed above, while assessing the reasons assigned by the learned trial judge and evaluating the conclusions, it is found that the learned trial judge has rightly taken the view to acquit the accused for the charges levelled against

them as prosecution could not establish the case against all the respondents. The judgment and order impugned in this appeal, therefore, requires no interference. Hence, the following order.

"Appeal is dismissed."

(J. R. VORA, J.)

(M.R. SHAHA, J.)

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